

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 546 of 1997

in

SPECIAL CIVIL APPLICATION No 2232 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

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2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

USHABEN R DESANI

Versus

ADDL DEVELOPMENT COMMISSIONER

Appearance:

MR NP NANAVATI for Petitioners

Ms. Binoda Gajjar for Respondent No. 1,2,3

MR BR KYADA for Respondent No. 4

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 30/06/97

Admitted.

Ms. Binoda Gajjar, learned Assistant Government Pleader appears and waives service of notice of admission on behalf of respondent nos 1,2 and 3 and Mr. Kyada learned counsel waives service of notice of admission on behalf of respondent no.4 . In the facts and circumstances of the case, with the consent of all the parties, the matter is taken up for final hearing today.

2. The appellant was removed from the post of Sarpanch by an order passed by the District Development Officer which was confirmed in appeal by the Additional Development Commissioner . It appears that against the said order a petition was filed by the appellant-petitioner, which came up for hearing before the learned single Judge. At the time of hearing a statement was made on behalf of respondent no.4 before the single Judge that the order was already implemented. The learned single Judge considering said statement, dismissed the petition on the ground that the petition had become infructuous. Mr. N.P.Nanavati learned counsel for the appellant submitted that the order passed by the learned single Judge is erroneous and there is an error apparent on the face of the record inasmuch as the petition was not decided on merits. The petition had not become infructuous in view of the fact that the appeal filed by the appellant before the Additional Development Commissioner was disposed of on merits. He submitted that grant of interim relief is one thing and disposal of the petition on the ground that it has become infructuous is entirely different thing. When the appeal was dismissed by the Additional Development Commissioner it was expected of the learned single Judge to decide the same on merits but the learned Judge has failed to do so. Instead the learned single Judge had dismissed the petition observing that since the order is already implemented, the petition had become infructuous. We find considerable force in the argument of Mr. Nanavati. Since the petition was not disposed of on merits we set aside the order passed by the learned single Judge and remand the matter to the learned single Judge and the learned single Judge will decide the petition on merits. We clarify that we are not going into the merits of the matter and we are not expressing any opinion on merits. The learned single Judge will decide the Special Civil Application in accordance with law. The appeal is allowed to that extent. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)